



April 10, 2001

Ms. Julie Gannaway
Assistant City Attorney
City of Bryan
P.O. Box 1000
Bryan, Texas 77805

OR2001-1438

Dear Mr. Gannaway:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 145788.

The City of Bryan Police Department (the "department") received a request for "electronic communications (E-Mails) sent or received from all mobile computer equipped police patrol units for the period of 2:30 p.m. of the 18th day of August, 2000, until 6:00 p.m. the evening of August 18, 2000." You claim that the requested information is excepted from disclosure under section 552.108 of the Government Code. You have submitted one page of transcribed electronic communications. You do not assert that this single page is a representative sample of the responsive information. We have considered the exception you claim and reviewed the submitted information.

Section 552.108 of the Government Code states that an internal record or notation of a law enforcement agency that is maintained for internal use in matters relating to law enforcement is excepted from required public disclosure if release of the internal record or notation would interfere with law enforcement. Gov't Code § 552.108(b)(1). Generally, a governmental body claiming section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. See Gov't Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(a); see also *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

You argue that the "encrypted e-mail messages are categorically exempt from public disclosure, regardless of their contents, because allowing the public to have access to them would interfere with essential law enforcement functions." You further explain that the encrypted messages can only be accessed by authorized personnel with a password in order to allow police officers to freely communicate with each other and prevent criminals from accessing the communications. You conclude that if "the public can gain access to encrypted

police e-mail communications by making a request for them under the Act, the whole purpose for having and using the system would be defeated.” We disagree with your arguments.

Your arguments focus on the encryption system itself rather than the contents of the electronic messages. The requestor does not seek any information concerning the encryption system. The communications themselves do not reveal any information concerning the encryption system. Furthermore, release of the messages do not allow criminals or a member of the public to access all of the department’s encrypted messages or give away the password to the system. Here, the request is for specified electronic messages alone. The fact that a message is encrypted does not mean that the public release of the message would interfere with law enforcement. A determination of whether section 552.108(b)(1) excepts the messages from public disclosure is made on a case-by-case basis depending on the department’s demonstration of how release of the requested messages would interfere with law enforcement. After reviewing the submitted information, we conclude that you have failed to demonstrate that release of the information reveals the department’s operations, strategies, and methods or interferes with law enforcement. Thus, the information is not excepted from disclosure by section 552.108(b)(1).

You state that the requested information relates to a pending prosecution. Section 552.108(a)(1) of the Government Code provides that information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from required disclosure if release of the information would interfere with the detection, investigation, or prosecution of crime. You have supplied a copy of a subpoena in a pending case which seeks “all messages sent or received via the mobile data transmission unit (MDTU) from the patrol units driven by officers D. Swartzlander and officer Jerry Eyre” for the period 2:30 P.M. August 18, 2000 until 6:00 P.M. August 18, 2000.” This discovery request is narrower than the pending request for information. While the information requested under the Act ostensibly includes the information requested by subpoena in the pending prosecution, you have provided no cause for this office to conclude that the prosecution will be adversely affected by the release of the submitted information. The Act requires you to explain how release of the submitted information would interfere with the detection, investigation, or prosecution of crime, which you have not done. Nor is such interference apparent on the face of the submitted information.

Thus, we conclude that you have not demonstrated that section 552.108(a)(1) excepts the submitted information from disclosure. Therefore, we conclude that the city must release all electronic communications sent or received from all mobile computer equipped police patrol units for the period of 2:30 p.m. of the 18th day of August, 2000, until 6:00 p.m. the evening of August 18, 2000.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

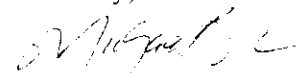
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael Jay Burns
Assistant Attorney General
Open Records Division

MJB/er

Ref: ID# 145788

Encl: Submitted documents

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